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4                   IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5                   IN AND FOR THE COUNTY OF MULTNOMAH

6                   SONJA BOHR, TAMARA BARNES,  
7                   KAREN FOGLESONG, and MARY  
8                   WOOD, on behalf of themselves and all  
others similarly situated,

9                   Plaintiffs,

10                  v.

11                  TILLAMOOK COUNTY CREAMERY  
12                  ASSOCIATION, an Oregon  
cooperative corporation,

13                  Defendant.

Case No.

**COMPLAINT AND DEMAND FOR JURY  
TRIAL**

CLASS ACTION/UNLAWFUL TRADE  
PRACTICES ACT/RESTITUTION  
(INJUNCTIVE AND EQUITABLE RELIEF)

**Claims not subject to mandatory arbitration  
Demand for Jury Trial**

Filing fee \$1,111.00 pursuant to  
ORS 21.160(1)(e)

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

28

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1 Plaintiffs Sonja Bohr, Tamara Barnes, Karen Foglesong, and Mary Wood  
2 ("Plaintiffs") allege:

3 **NATURE OF THE CASE**

4 1.

5 This is a proposed class action on behalf of a statewide class seeking redress for  
6 Tillamook's deceptive practices. Tillamook causes likelihood of confusion or  
7 misunderstanding as to the source of the dairy products it sells. Tillamook causes  
8 likelihood of confusion or misunderstanding as to the affiliation, connection, or  
9 association with another of those products. Tillamook uses deceptive representations or  
10 designations of geographic origin in connection with its dairy products. Tillamook  
11 misrepresents the nature, source, characteristics, and production practices of its dairy  
12 products. And Tillamook fails to disclose known material defects or nonconformity of its  
13 products in violation of Oregon state consumer protection laws and common law.

14 2.

15 Specifically, Tillamook has engaged in a deceptive marketing campaign to  
16 convince consumers that the dairy cows who provide milk for its products graze on  
17 pastures in Tillamook County. Tillamook represents to consumers that its products are  
18 sourced from small family farms whose traditional farming practices are better for the  
19 environment, the local community, and of course the cows than are the industrial dairy  
20 facilities that Tillamook derides as "Big Food."

21 3.

22 Unfortunately for consumers, Tillamook is Big Food: Tillamook sources upwards  
23 of two thirds of the milk for its products from the largest and most industrialized dairy  
24 factory farm in the country—a Concentrated Animal Farming Operation ("CAFO") with  
25 over 70,000 total cows and 32,000 dairy cows confined in a single location. Located in

1 eastern Oregon, this complex of cement-floored production facilities and barren dirt  
2 feedlots, where cows are continuously confined, milked by robotic carousels, and  
3 afflicted with painful udder infections, is a far cry from the rolling green hills of the  
4 Tillamook County family farms shown throughout Tillamook's marketing campaign.  
5

6 4.

7 Consumers increasingly seek out and are willing to pay more for products that  
8 they perceive as being locally and ethically sourced—better for the environment, more  
9 humane. Tillamook has projected such ethical sourcing as its company ethos,  
10 deliberately crafting its marketing messages to attract these consumers, who believe they  
11 are getting such responsibly sourced products when they buy Tillamook cheese and ice  
12 cream. As the company says, "*Tillamook cheddar cheese is made with four ingredients,  
patience, and old-fashioned farmer values in Tillamook, Oregon.*"  
13

14 5.

15 Indeed, through its marketing, Tillamook is capitalizing on a sea change in  
16 consumer purchasing preference. More than three out of four consumers (77 percent)  
17 say that they are concerned about the welfare of animals used in food production,<sup>1</sup> and  
18 80 percent of consumers report good living conditions for animals to be "very  
19 important" or "important" to them.<sup>2</sup> Two-thirds of consumers check to see if their food  
20 is locally produced—and 92 percent of consumers consider supporting local farmers  
21 "very important" or "important."<sup>3</sup>

22 <sup>1</sup> Lake Research Partners, ASPCA Labeling Survey (June 2016), available at  
23 [https://www.aspca.org/sites/default/files/publicmemo\\_asPCA\\_labeling\\_fi\\_rev1\\_0629716.pdf](https://www.aspca.org/sites/default/files/publicmemo_asPCA_labeling_fi_rev1_0629716.pdf). See also C. Victor Spain et al., *Are They Buying It? United States Consumers' Changing Attitudes toward More Humanely Raised Meat, Eggs, and Dairy*, 8 ANIMALS 128 (Aug. 2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6116027/>.

24 <sup>2</sup> 2014 Consumer Reports National Research Center, Food Labels Survey, available at  
25 <http://www.panna.org/sites/default/files/ConsumerReportsFoodLabelingSurveyJune2014.pdf>.

26 <sup>3</sup> *Id.*

1  
2                 6.

3                 Consumers also seek out products made by small-scale farmers in order to  
4 support non-industrialized farming, to eschew products that contribute to corporate  
5 control of the food system, and support products that are environmentally sustainable.<sup>4</sup>  
6 These strong consumer trends explain why Tillamook chooses to make representations  
7 about small-scale farms and outdoor-grazing cows so prominently throughout its  
marketing.

8                 7.

9                 Tillamook's marketing is highly effective at convincing consumers that its dairy  
10 products are sourced from smaller, pasture-based dairies in Tillamook County that  
11 prioritize animal welfare and environmental stewardship more than large, industrial  
12 dairies do.

13                 8.

14                 According to a recent consumer survey of Pacific Northwest consumers, the  
15 majority of Tillamook dairy purchasers believe, from Tillamook's representations, that  
16 Tillamook sources milk from small-scale family farms and not large industrial dairy  
17 farms. The majority of Tillamook consumers likewise believe that the company's dairy  
18 farms are located in Tillamook County, Oregon, that Tillamook farmers treat cows more  
19 humanely than other dairies do, and that Tillamook's animal welfare standards exceed  
20 those of other dairy companies.

21                 9.

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23  
24                 

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<sup>4</sup> FAIR WORLD PROJECT, FAIRNESS FOR FARMERS (2018), available at  
25                 [https://fairworldproject.org/wp-content/uploads/2018/09/Fair\\_World\\_Project-Fairness-For-Farmers-Report.pdf](https://fairworldproject.org/wp-content/uploads/2018/09/Fair_World_Project-Fairness-For-Farmers-Report.pdf).

Tillamook's deceptive marketing campaigns catering to conscientious dairy consumers have reaped major rewards. Tillamook's CEO says the company may soon surpass \$1 billion in sales,<sup>5</sup> and has experienced 70 percent growth in revenue thanks in large part to its "Dairy Done Right" marketing campaign.<sup>6</sup>

10.

The year after Tillamook launched “Dairy Done Right,” Tillamook launched its “Goodbye Big Food” campaign (see Illustration 9 below). Within 48 hours of the launch (touted by Adweek as a campaign that “*cast[s] Tillamook products as wholesome, tasty ‘real food’ alternatives to mass-produced fare*”<sup>7</sup>), Tillamook social media mentions increased by 450 percent.<sup>8</sup> Indeed, in a recent consumer survey of Pacific Northwest consumers, the overwhelming majority (93.7 percent) of respondents were familiar with the Tillamook brand, which was the most recognized dairy product brand (even over Kraft).

11

Tillamook's advertising campaigns are designed to tell consumers that Tillamook is different from the "flawed industrialized food system" and to "provoke people to question the food they eat and the system behind it"<sup>9</sup>—despite the fact that Tillamook is

<sup>5</sup> Mary Ellen Shoup, *Tillamook CEO Talks Dairy Innovation and Ambitions of Reaching \$1B in Sales*, FOOD NAVIGATOR Oct. 22, 2018, <https://www.foodnavigator-usa.com/Article/2018/10/22/Tillamook-CEO-talks-dairy-innovation-and-ambitions-of-reaching-1bn-in-sales> (last visited Aug. 12, 2019).

<sup>6</sup> The Challenger Project, Patrick Criteser interview, <https://thechallengerproject.com/blog/2017/patrick-criteser-tillamook-interview> (last visited Aug. 12, 2019).

<sup>7</sup> David Gianatasio, Tillamook Says a Fun, Violent Farewell to “Big Food” in Eye-Catching Ads by 72andSunny, Adweek Mar. 2, 2016, <https://www.adweek.com/creativity/tillamook-says-fun-violent-farewell-big-food-eye-catching-ads-72andsunny-169963/> (last visited Aug. 12, 2019) (emphasis added).

<sup>8</sup> The Shorty Awards, Tillamook “Goodbye Big Food, Hello Real Food” Social Launch, <https://shortyawards.com/9th/tillamook-goodbye-big-food-hello-real-food-oscars-launch> (last visited Aug. 12, 2019).

9 *H*

the embodiment of industrialized dairy. Ironically, the co-head of the advertising firm for Tillamook's "Goodbye Big Food" campaign publicly claimed that "How our food is made, and by whom, is no longer a niche topic but rather an escalating conversation in culture. Tillamook is . . . *offering an honest point of view* that invites people to independently make up their minds."<sup>10</sup>

12.

Tillamook causes likelihood of confusion and misunderstanding as to the source of its dairy products by extensive advertising that the products are sourced from humane, pasture-based farms producing “real food.” Tillamook’s repeated representations about geographic origin and source masks Tillamook’s true milk sourcing practices. Consumers who believe they are buying products from small, high-welfare, pasture-based dairies in Tillamook County are instead unwittingly purchasing cheese, butter, ice cream, and yogurt made from milk from the largest industrial dairy in the country—that confines tens of thousands of cows on concrete in the desert of eastern Oregon.

13.

Plaintiffs thus bring this action on behalf of themselves and similarly situated Oregon consumers, to hold Tillamook accountable for its uniform and pervasive claims falsely representing the company's products as coming exclusively from small-scale, pasture-based farms in Tillamook County that provide individualized care for cows, when this could not be further from the truth.

## **JURISDICTION AND VENUE**

14.

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<sup>10</sup> *Id.* (emphasis added).

## **COMPLAINT AND DEMAND FOR JURY TRIAL**

Jurisdiction and venue are proper in Oregon, Multnomah County because Tillamook engages in regular and sustained business in Oregon and in Multnomah County. Tillamook maintains a registered agent for service of process in Oregon. And one or more of the Plaintiffs bought Tillamook products in Multnomah County.

## THE PARTIES

15.

Plaintiff Sonja Bohr is a resident of Multnomah County, Oregon. During the past year (the "Class Period" as defined below), she purchased Tillamook dairy products—including cheese, yogurt, sour cream, and butter—in Oregon from one or more retailers, including Fred Meyer on Hawthorne Boulevard in Portland, for personal, family, or household purposes. Ms. Bohr saw the name "Tillamook" and Tillamook's marketing representations and believed that Tillamook products were all made from milk sourced from traditional pasture-based farms in Tillamook County, Oregon—and not from large-scale "factory farms." Ms. Bohr has seen similar representations made by Tillamook relating to its dairy products in online, print, or television advertising.

16.

Ms. Bohr regularly seeks out, and is willing to pay more for, dairy products that she perceives as being more humane and coming from small, pasture-based dairies. Because she thought Tillamook was the gold standard in her area, she has been a loyal Tillamook consumer. Ms. Bohr purchased Tillamook products because, having seen the Tillamook representations, she thought she was purchasing a product that aligned with her values. If she had known the truth—that the vast majority of the milk sourced for Tillamook products comes from a massive factory farm in Eastern Oregon where cows are never allowed to graze on grass—she would have bought other dairy products instead of Tillamook's, or would not have paid as much as she did for the Tillamook

1 products. Because of Tillamook's false representations, Ms. Bohr paid a premium,  
2 organic- and/or artisan-dairy price for an industrially produced, factory-farmed product.  
3

4 17.

5 Plaintiff Tamara Barnes is a resident of Lane County, Oregon. During the Class  
6 Period, she purchased Tillamook dairy products—including cheese and ice cream—in  
7 Oregon from one or more retailers, including WinCo and Walmart, for personal, family,  
8 or household purposes. Ms. Barnes saw the name "Tillamook" and Tillamook's  
9 marketing representations and believed that Tillamook products were all made from  
10 milk sourced from small-scale family farms in Tillamook County, Oregon. Ms. Barnes  
11 has seen similar representations made by Tillamook relating to its dairy products in  
12 online, print, or television advertising.

13 18.

14 Ms. Barnes regularly seeks out, and is willing to pay more for, dairy products that  
15 she perceives as being more humane and coming from small, pasture-based dairies. For  
16 example, in addition to Tillamook products, Ms. Barnes has sought out and purchased  
17 Umpqua Dairy and Rogue Creamery dairy products. She particularly avoids Kraft and  
18 other large dairy brands specifically because of her concerns about factory farming and  
19 the abuse that those cows suffer. Ms. Barnes purchased Tillamook products because,  
20 having seen the Tillamook representations, she thought she was purchasing a product  
21 that aligned with her values. If she had known the truth—that the vast majority of the  
22 milk sourced for Tillamook products comes from a massive factory farm in Eastern  
23 Oregon where cows are never allowed to graze on grass—she would have bought other  
24 dairy products instead of Tillamook's, or would not have paid as much as she did for the  
25 Tillamook products.

26 19.

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28 COMPLAINT AND DEMAND FOR JURY TRIAL

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1 Plaintiff Karen Foglesong is a resident of Baker County, Oregon. During the Class  
2 Period, she purchased Tillamook dairy products—including cheese and ice cream—in  
3 Oregon from one or more retailers, including Albertson's and Safeway, for personal,  
4 family, or household purposes. Ms. Foglesong saw the name "Tillamook" and  
5 Tillamook's marketing representations and believed that Tillamook practices were those  
6 of small-scale family farms and not large industrial dairy farms. Ms. Foglesong has seen  
7 similar representations made by Tillamook relating to its dairy products in online, print,  
8 or television advertising.

9 20.

10 Ms. Foglesong regularly seeks out, and is willing to pay more for, dairy products  
11 that she perceives as being more humane and coming from small, pasture-based dairies.  
12 For example, in addition to Tillamook products, Ms. Foglesong has sought out and  
13 purchased Organic Valley dairy products and other local dairy products at her local  
14 farmer's market. Ms. Foglesong purchased Tillamook products because, having seen the  
15 Tillamook representations, she thought she was purchasing a product that aligned with  
16 her values. If she had known the truth—that the vast majority of the milk sourced for  
17 Tillamook products comes from a massive factory farm in Eastern Oregon where cows  
18 are never allowed to graze on grass—she would have bought other dairy products  
19 instead of Tillamook's, or would not have paid as much as she did for the Tillamook  
20 products.

21 21.

22 Plaintiff Mary Wood is a resident of Curry County, Oregon. During the Class  
23 Period, she purchased Tillamook dairy products—including cheese and butter—in  
24 Oregon from one or more retailers, including Fred Meyer, for personal, family, or  
25 household purposes. Ms. Wood saw the name "Tillamook" and Tillamook's marketing

representations and believed that Tillamook practices were those of small-scale family farms and not large industrial dairy farms. Ms. Wood has seen similar representations made by Tillamook relating to its dairy products in online, print, or television advertising.

22.

Ms. Wood regularly seeks out, and is willing to pay more for, dairy products that she perceives as being more humane and coming from small, pasture-based dairies. For example, in addition to Tillamook products, Ms. Wood has sought out and purchased Cowgirl Creamery organic cheese products from Market of Choice as well as Rumiano Cheese products direct from the creamery in Northern California. Ms. Wood purchased Tillamook products because, having seen the Tillamook representations, she thought she was purchasing a product that aligned with her values. If she had known the truth—that the vast majority of the milk sourced for Tillamook products comes from a massive factory farm in Eastern Oregon where cows are never allowed to graze on grass—she would have bought other dairy products instead of Tillamook's, or would not have paid as much as she did for the Tillamook products.

23

Defendant Tillamook County Creamery Association is an Oregon cooperative corporation that does business in Oregon and across the United States. In 2017, Tillamook's revenue attributable to its dairy products was \$800 million.<sup>11</sup>

<sup>11</sup> Mary Ellen Shoup, *Tillamook CEO Talks Dairy Innovation and Ambitions of Reaching \$1B in Sales*, FOOD NAVIGATOR Oct. 22, 2018, <https://www.foodnavigator-usa.com/Article/2018/10/22/Tillamook-CEO-talks-dairy-innovation-and-ambitions-of-reaching-1bn-in-sales> (last visited Aug. 12, 2019).

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## **GENERAL ALLEGATIONS**

24.

Throughout the Class Period, Tillamook engaged—and continues to engage—in widespread marketing efforts that cause likelihood of confusion regarding the source of its dairy products and their affiliation, connection, or association with another. These efforts include deceptive representations of geographic origin in connection with Tillamook dairy products. Tillamook also fails to disclose to consumers that its products are made with milk from an industrial mega-dairy in Eastern Oregon.

25.

Tillamook's marketing uniformly depicts cows on pasture, farmer and family involvement being integral to cow care (including children helping in cow care), and small-scale farms, complete with idyllic red barns. See Illustrations 1 – 4 below. Tillamook's messages constitute concrete and uniform representations about the geographic location of Tillamook farms, Tillamook's production practices, and its animal welfare practices.

## **Illustration 1**

### **Facebook landing page for Tillamook**



1  
2                   **Illustration 2**  
3                   **Tillamook Instagram post**



14                   **Illustration 3**  
15                   **Tillamook Instagram post**



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1  
2                   **Illustration 4**  
3                   Tillamook Instagram post  
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14



26.

15                   Tillamook's Facebook page describes the company as follows:

16  
17                   Over a hundred years ago, several small creameries teamed up to form  
18                   the Tillamook County Creamery Association (TCCA) to ensure the  
19                   quality and reputation of cheese made in the Tillamook Valley. Today  
20                   we're made up of approximately 90 dairy farm families who own  
TCCA and are wholeheartedly dedicated to taking care of all dairy  
products that carries [sic.] the Tillamook name. (emphasis added)

21                   27.

22                   Tillamook's marketing messages cause likelihood of confusion or  
23                   misunderstanding of the source of its products. Tillamook deceptively claims its dairy  
24                   products are (1) sourced (exclusively) from dairy farms located in Tillamook County, (2)  
25                   made using production practices that closely resemble small-scale traditional farming,

and (3) from cows allowed to graze on pasture and treated better than those on factory farms. Tillamook makes these deceptive representations on its website, in print and television advertisements, and across social media platforms.

## **Geographic origin claims.**

**"There are only a few places in the world where the character of the land is inseparable from the character of its people."<sup>12</sup>**

28.

Crucial to Tillamook's marketing are the representations that its products are made in Tillamook County, Oregon—from cows raised in the verdant hills and valleys of the Oregon coast. These claims are false. They cause likelihood of confusion or of misunderstanding in violation of ORS 646.608(1)(b) and (1)(c). They are deceptive representations of geographic origin in violation of ORS 646.608(1)(d).

29.

Tillamook is a small community. Tillamook County ranges from the Pacific Ocean to about 50 miles inland to the east. The county has a year-round mild, temperate climate and abundant rain.

30.

Dairy farming is the largest agriculture occupation in Tillamook County. The dairy farms located in Tillamook are predominantly small-scale operations that more closely reflect traditional farming practices than today's industrialized factory farms. Driving by these dairies, you can see dairy cows grazing on pastures of rolling green hills. This is exactly the imagery that Tillamook capitalizes on throughout its marketing campaign. See Illustrations 5 and 6 below.

<sup>12</sup> A Portrait of Dairy: A Photo Essay, published by Tillamook on Slate.com, [http://www.slate.com/articles/health\\_and\\_science/tillamook/2015/08/a\\_portrait\\_of\\_dairy\\_a\\_photo\\_essay\\_of\\_the\\_tillamook\\_co-op.html](http://www.slate.com/articles/health_and_science/tillamook/2015/08/a_portrait_of_dairy_a_photo_essay_of_the_tillamook_co-op.html) (last visited Aug. 12, 2019).

**Illustration 5**  
**Tillamook website - On The Farm 360° Experience**



## **Illustration 6**

### Tillamook website landing page



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31.

Tillamook repeatedly and prominently represents to consumers that its products are "*made with . . . old-fashioned farmer values in Tillamook, Oregon*" by "families [that] have been farming in Tillamook County for multiple generations."

32.

Other geographic origin claims include: "We're from a real place on the Oregon coast," "our gold [i.e., cheese] comes from . . . the deep green grass . . . and pouring rain of the Tillamook Valley," "We're committed to sustaining the farming way of life in Tillamook County," and near-constant references to "Tillamook farmers" (conflating the company and the location).

33.

The name of the company itself—Tillamook County Creamery Association—gives the clear impression that the company and its products are from Tillamook County, Oregon. In case there was any room for confusion:

Illustration 7  
Tillamook website



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1  
2                   34.

3                   In fact, when shown Illustration 7 above, large majorities of respondents to a  
4 consumer survey on Tillamook's advertisements understood it to mean that Tillamook's  
5 dairy farms are located in Tillamook County, Oregon. Similarly, when exposed to the  
6 marketing claim, "Tillamook cheddar cheese is made with four ingredients, patience,  
7 and old-fashioned farmer values in Tillamook, Oregon," a significant majority of  
8 respondents took away that Tillamook's dairy farms are located in Tillamook, Oregon.  
9 This is exactly the purpose and goal of Tillamook's marketing campaign.

10                  35.

11                  Consumers prefer local dairies for a number of reasons, including perceived  
12 health or quality of the final product, reduced environmental impact, benefits to the  
13 local community's economy, and seeing firsthand the production practices of the  
14 companies involved.

15                  36.

16                  Knowing this, Tillamook makes these deceptive claims throughout the marketing  
17 campaign for all of its products. Deceptive representations about the geographic origin  
18 appear throughout Tillamook's website, product packaging, print and television  
19 advertisements, and on internet advertising and social media platforms (in which  
20 Tillamook participates actively).

21                  37.

22                  In contrast to Tillamook's explicit claims, a large majority of the milk that  
23 Tillamook uses in its products is actually sourced from its massive factory farms in  
24 Boardman, Oregon.

25                  38.

26                  - 16 -

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27                  **COMPLAINT AND DEMAND FOR JURY TRIAL**

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Boardman is located on the opposite side of the state as Tillamook County. Instead of Tillamook County's mild and wet climate filled with verdant pasture, Boardman is a hot, dry climate classified as steppe or semi-arid. Boardman is flat, arid, and often swelteringly hot—nothing like Tillamook County. And the mega-dairy in Boardman is so large that it is visible from space.

39.

Tillamook's claims are pervasive. And they convey information not only about geographic origin, but also about the production methods and animal welfare practices used to make Tillamook products.

#### **Production practices claims.**

**"Tradition Is Important As Hell . . . members are impassioned about passing on the dairy farming tradition"**<sup>13</sup>

40.

Throughout its marketing campaign, Tillamook uses only imagery from small, idyllic farms in Tillamook County. Tillamook makes deceptive representations about its production practices claims on its website, in print and television advertisements, and across social media platforms.

41.

Examples of Tillamook's production claims include: "each member of the family is involved in life on the farm, including the kids, who often help with daily chores like feeding the calves," "farmer values," "we are independent farmer-owners, which means our values guide us instead of profit margins."

42.

<sup>13</sup> Tillamook website, <https://www.tillamook.com/our-story/tillamook-co-op.html> (last visited Aug. 12, 2019).

Throughout its marketing campaign, Tillamook pervasively shows cows in open-air barns or on fresh, green pasture. They are shown being given personalized attention by the owners of these small farms and their families. Much of Tillamook's marketing content involves the young children of dairy families giving Tillamook cows care and affection. See Illustrations 8 and 12 below and Illustration 2 above.

**Illustration 8**  
**Tillamook website, "On The Farm"**



43.

By highlighting local families' and farmers' attention to the process of tending for cows and producing milk, Tillamook perpetuates the idea that Tillamook producers are not "factory farms" where cows are treated like just one of tens of thousands of units to be milked, but rather small-production farms that respect their animals and traditional farming practices.

44.

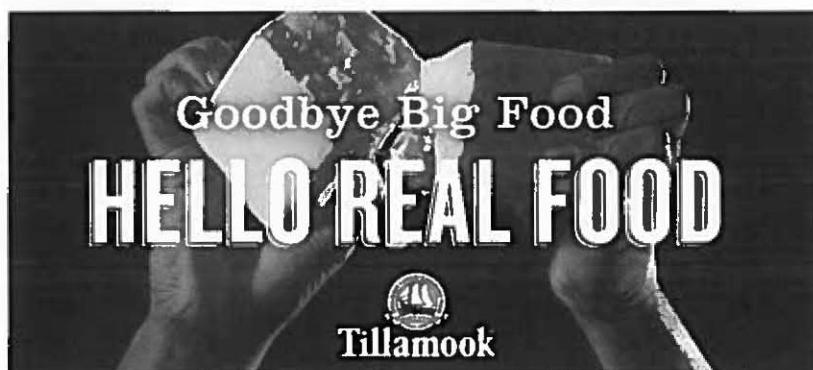
1 On its website, Tillamook shows cows being milked and attended to individually  
2 by caretakers who take their time cleaning and prepping their udders and even petting  
3 and talking to them.<sup>14</sup>

4 45.

5 In this, and many other ways, Tillamook actively seeks to differentiate itself from  
6 "factory farms" and industrialized food. In fact, Tillamook devoted an entire marketing  
7 campaign that encouraged consumers to "Say Goodbye to Big Food" and to purchase  
8 Tillamook products because they are "real food" and "Dairy Done Right." See  
9 Illustrations 9 and 10 below.

10 Illustration 9

11 Print advertisement, "Goodbye Big Food, Hello Real Food"



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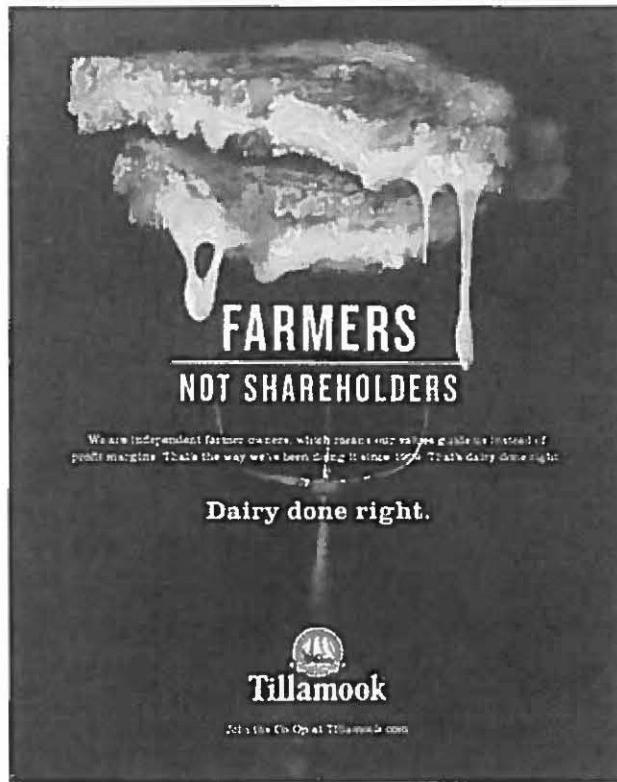
26

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<sup>14</sup> Tillamook website, <https://www.tillamook.com/national/milking> (last visited Aug. 12, 2019).

**Illustration 10**  
Print advertisement, "Farmers, Not Shareholders"



46.

In Tillamook's signature television advertisement<sup>15</sup> saying goodbye to "Big Food," the narrator states, "Enough quantity over quality. I'm done." The narrator says hello to "Real Food," against a backdrop of farmers in misty Tillamook County, rising early to tend to cows and do farm chores:

*Hello farmers. Hello Co-Op. Hello Integrity [with image of little girl bottle-feeding calf]. Hello Molly [cow being petted]...Hello people who care about their food and how it's made. Hello everyone. We found something real: Tillamook.*

<sup>15</sup> See Tillamook: Goodbye Big Food. Hello Real Food, [https://www.youtube.com/watch?v=7PIRO\\_C2uRo](https://www.youtube.com/watch?v=7PIRO_C2uRo) (last visited Aug. 12, 2019).

1       The ad ends with the Tillamook logo, under the slogan, "Dairy done right." This  
2 ad was first aired during the 2016 Academy Awards, and went on to have 108 national  
3 airings that year.

4                          47.

5       Rather than the bucolic facilities and idyllic production practices showcased in  
6 Tillamook's marketing campaign, Tillamook sources the large majority of the milk for its  
7 products from one of the largest and most industrialized dairies in the world: Threemile  
8 Canyon Farms' 70,000-cow complex in Boardman. In fact, Tillamook's Boardman  
9 production facility is the largest dairy factory farm in the United States.

10                         48.

11       Tillamook's facilities at Threemile confine cows in large warehouses with tens of  
12 thousands of other animals. This is the polar opposite of what consumers expect when  
13 they see red barns, family cow care, and outdoor-grazing cows throughout Tillamook's  
14 marketing. In fact, Tillamook's Threemile facilities in no way resemble the small-scale  
15 family farms prominently showcased in Tillamook's marketing.

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27                         - 21 -

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COMPLAINT AND DEMAND FOR JURY TRIAL

28       **David F. Sugerman | Attorney, PC**

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1  
2                   **Illustration 11**  
3                   **Threemile Canyon Farms, home to 70,000 cows**



20                   49.

21                   Threemile has so many dairy cows that it has to use a computerized database to  
22                   keep track of its cows, and boasts of "round-the-clock" milking. Instead of grazing on  
23                   green grass in pastures, the cows confined at Threemile are fed corn, alfalfa, and other  
24                   feed crops.<sup>16</sup> Threemile milks 25,000 cows daily—"all done without a single person

25                   <sup>16</sup> Threemile Canyon Farms website, Dairy Partnerships,  
26                   <https://www.threemilecanyonfarms.com/partnerships/dairy> (last visited Aug. 12, 2019).

1 ushering them into place," and robotic arms are "who" clean and stimulate each cow's  
2 udders.<sup>17</sup>

3 50.

4 Tillamook's marketing messages, such as the claim that Tillamook cheese is made  
5 with "old-fashioned farmer values," prompted in respondents to a consumer survey  
6 clear perceptions regarding the company's operations—i.e., similar to a family farm  
7 rather than an industrial operation. In fact, when shown Illustration 9 (Goodbye Big  
8 Food), a significant majority of respondents took away that Tillamook gets all its milk  
9 from small-scale family farms and not large industrial dairy farms. This ad, as well,  
10 prompted clear perceptions regarding the company's reliance on small-scale family  
11 farms rather than large industrial milk suppliers, and its superior animal treatment.

12 51.

13 Similarly, survey respondents were presented with one of Tillamook's typical  
14 social media posts, an image of "three generations" of a Tillamook farm family,  
15 accompanied by the text,

16 *Everything Tillamook farmers do is for the health, comfort and happiness of their  
17 cows. Chairman of the Board Shannon Lourenzo's barns are outfitted with  
18 waterbeds. Many of his neighbors' barns are decked out with backscratchers.  
19 Farmer Wendy Landolt, wife of Director Ryan Landolt, is renowned for singing  
20 country songs to the baby calves. Cows are the foundation of Tillamook's business.  
21 Importantly, they're also a part of our farmers' families. So there's no limit to the  
22 care our farmers will give, 24 hours a day, 7 days a week.*

23 From this ad, respondents took away a strong impression that Tillamook gets all  
24 its milk from small-scale family farms and not large industrial dairy farms. Consumers

25  
26  
27  
28 <sup>17</sup> Erick Peterson, *Dairy Strive to Keep Improving*, CAPITAL PRESS (May 29, 2018),  
<http://www.capitalpress.com/Oregon/20180529/dairy-strives-to-keep-improving> (last visited Aug. 12, 2019).

1 expressed a clear perception regarding the company's special treatment of and care for  
2 its animals, of cows grazing freely on pastures, on small-scale family farms which are  
3 the only source of the company's milk.

4 52.

5 Like the consumers surveyed, Plaintiffs, who thought they were buying products  
6 sourced from such small family farms and pasture-grazing cows in Tillamook, Oregon,  
7 were shocked and dismayed to learn they were in fact patronizing the country's largest  
8 dairy factory farm, where tens of thousands of cows are confined on concrete or in  
9 barren feedlots.

10 53.

11 Because Tillamook's pervasive production claims mislead consumers into  
12 believing that Tillamook products are sourced from small, local farms where cows graze  
13 on grass and are given individualized care, Tillamook's claims are deceptive, and are  
14 likely to mislead reasonable consumers like Plaintiffs.

15 **Animal welfare claims.**

16 "There's always a well-intentioned reason behind everything our farmers do, and it's  
17 always for the health and comfort of their animals."<sup>18</sup>

18 54.

19 Prevalent throughout Tillamook's marketing are representations about the  
20 superior treatment of its cows. Tillamook marketing broadly features cows afforded  
21 outdoor access—often, cows contentedly grazing on verdant, wide-open pastures. At  
22 Tillamook's creamery where the company markets directly to the public, one exhibit  
23 tells consumers that "cows need places to rest and roam." Tillamook also represents,

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24  
25 <sup>18</sup> Tillamook website, Our Story, Calf-Care, <https://www.tillamook.com/our-story/calf-care.html>  
(last visited Jul. 29, 2019).

1 through imagery and specific claims, that its cows are given personalized attention and  
2 care by the owners of these small farms and their families. See Illustration 8 above and  
3 Illustrations 12 and 13 below.

4 55.

5 Examples of Tillamook's animal welfare claims include: "We treat our cows like  
6 family," "Our farmers know that happy, healthy cows make quality, wholesome milk,"  
7 "The best dairy calls for the best cow care," "best practices in animal welfare," "living  
8 just yards from the barn, farmers are around 24/7/365 for their cows," and "even the  
9 cows are happy."

10 **Illustration 12**

11 **Tillamook photo essay published on Slate.com, A Portrait of Dairy<sup>19</sup>**



20 56.

21 Consumers reasonably expect that smaller family-run dairies provide  
22 individualized care to cows. By using only imagery from these small, Tillamook County  
23 farms, where cows are kept in open-air barns with clean hay bedding, or on fresh, green

24 <sup>19</sup> A Portrait of Dairy: A Photo Essay, published by Tillamook on Slate.com,  
25 [http://www.slate.com/articles/health\\_and\\_science/tillamook/2015/08/a\\_portrait\\_of\\_dairy\\_a\\_photo\\_essay\\_of\\_the\\_tillamook\\_co\\_op.html](http://www.slate.com/articles/health_and_science/tillamook/2015/08/a_portrait_of_dairy_a_photo_essay_of_the_tillamook_co_op.html) (last visited Aug. 12, 2019).

pasture, Tillamook caused Plaintiffs and other reasonable consumers to believe that all the cows milked for Tillamook products are similarly treated.

### Illustration 13 Tillamook Instagram post



1  
2                   **Illustration 14**  
3                   Tillamook website, Our Story<sup>20</sup>



11                   *Three generations of the Seals Family*

12                   **Gotta Love The Cows**

13                   Everything Tillamook farmers do is for the health, comfort  
14                   and happiness of their cows. Chairman of the Board Shannon  
15                   Lourenzo's barns are outfitted with waterbeds. Many of his  
16                   neighbors' barns are decked out with backscratchers. Farmer  
17                   Wendy Landolt, wife of Director Ryan Landolt, is renowned  
18                   for singing country songs to the baby calves.

19                   Cows are the foundation of Tillamook's business. Importantly,  
20                   they're also a part of our farmers' families. So there's no limit  
21                   to the care our farmers will give, 24 hours a day, 7 days a  
22                   week.

23  
24  
25                   <sup>20</sup> Tillamook website, Our Story, <https://www.tillamook.com/our-story/tillamook-co-op.html>

1  
2                   **Illustration 15**  
3                   **Tillamook Instagram post**



- 28 -

27                   **COMPLAINT AND DEMAND FOR JURY TRIAL**

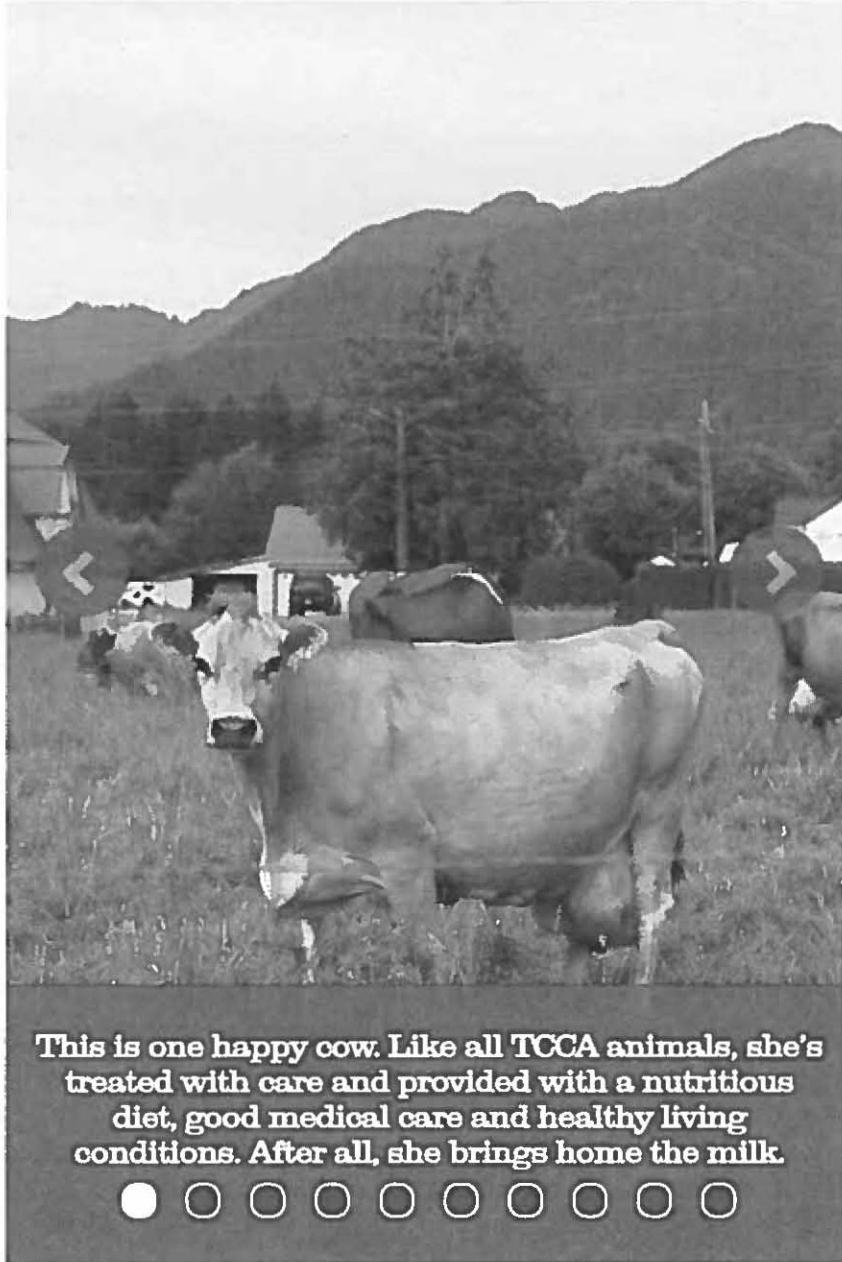
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### Illustration 16

Tillamook photo essay published on Slate.com, A Portrait of Dairy<sup>21</sup>



<sup>21</sup> A Portrait of Dairy: A Photo Essay, published by Tillamook on Slate.com, [http://www.slate.com/articles/health\\_and\\_science/tillamook/2015/08/a\\_portrait\\_of\\_dairy\\_a\\_photo\\_essay\\_of\\_the\\_tillamook\\_co\\_op.html](http://www.slate.com/articles/health_and_science/tillamook/2015/08/a_portrait_of_dairy_a_photo_essay_of_the_tillamook_co_op.html) (last visited Aug. 12, 2019).

## **COMPLAINT AND DEMAND FOR JURY TRIAL**

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1  
2                         57.

3                         However, the cows at Tillamook's Boardman, Oregon factory farm experience  
4                         nothing like this. Instead, cows confined at Threemile Canyon are housed by the tens of  
5                         thousands in industrial-type warehouses where they stand on concrete or in their own  
6                         waste. They don't wander indoors and outdoors and graze at their leisure. There are no  
7                         small children taking care of each of them, and it's extremely unlikely that—given the  
8                         32,000+ dairy cows in one facility at Threemile—anyone bothers to give individual  
9                         names or attention to them (as indicated by some of Tillamook's social media posts).

10                         58.

11                         Cows confined in industrial factory farms like Tillamook's in Boardman  
12                         frequently suffer from a disease called mastitis. Mastitis is a bacterial invasion of the  
13                         mammary gland, and can occur as a result of trauma to cows' udder caused by milking  
14                         machines, poor sanitation in milking parlors and barns, and genetic selection for  
15                         extremely high milk yield. Mastitis is the most prevalent disease among dairy cows, and  
16                         for the cows, is excruciatingly painful.

17                         59.

18                         Cows suffering from mastitis produce milk with a high somatic cell count (SCC)  
19                         produced in response to the cow's infected mammary gland. An SCC of more than  
20                         200,000 cells per milliliter of milk is "abnormal and an indication of inflammation in the  
21                         udder."<sup>22</sup> Oregon does not permit milk with an SCC of 500,000 cells per milliliter to be  
22                         sold. Tillamook's bulk milk from Threemile Canyon Farms routinely has an SCC of more  
23                         than 200,000, with SCCs of up to 450,000 in 2016 and 340,000 in 2017.

24                         <sup>22</sup> U.S. Dep't of Agric., *Dairy 2014: Part II—Milk Quality, Milking Procedures, and Mastitis on U.S.*  
25                         *Dairies, 2014*, at 47 (Sept. 2016),  
[https://www.aphis.usda.gov/animal\\_health/nahms/dairy/downloads/dairy14/Dairy14\\_dr\\_Mastitis.pdf](https://www.aphis.usda.gov/animal_health/nahms/dairy/downloads/dairy14/Dairy14_dr_Mastitis.pdf).

1  
2                   60.

3     This means that the majority of Tillamook's cows are suffering from mastitis—a  
4     painful disease caused or made worse by teat trauma from milking, and by poor  
5     sanitation.

6                   61.

7     In short, there is a world of difference between the animal care and living  
8     environments depicted in Tillamook's marketing campaign and those experienced by  
9     the vast majority of cows that supply Tillamook milk. In reality, most of Tillamook's  
10    cows are never allowed access to pasture (or even outside the warehouses in which they  
11    are confined), are not provided individualized care on small family farms, and are even  
12    suffering from painful infections.

13                  62.

14     When respondents to a recent survey were presented with the claim, "*Tillamook*  
15    *cheddar cheese is made with four ingredients, patience, and old-fashioned farmer values in*  
16    *Tillamook, Oregon,*" and asked what old-fashioned farmer values are, when it comes to  
17    animal care, over 70 percent referred to animal treatment and well-being, the  
18    environment in which animals were raised, the natural/unaltered quality of their raising,  
19    and the creation of a superior product. To consumers, Tillamook is saying: "*Raising*  
20    *animals humanely, feeding them ethically and taking pride in your work;*" "*Take care of the*  
21    *animals, feed them natural foods, don't give them antibiotics and don't feed them gmos;*" "*not*  
22    *mass produced - being humane;*" "*I think animals need to be treated with care and attention, and*  
23    *old farmer values should reflect that in the time before industrialization of livestock.*"

24                  63.

25     In another, closed-end survey question, this same marketing claim prompted  
26     clear perceptions regarding the company's concern for animal welfare. And relative to

1 respondents from Idaho, Montana, and Washington (the other three Pacific Northwest  
2 states surveyed), those from Oregon were more likely to agree that the claim conveyed  
3 that Tillamook's cows are treated more humanely than those of other companies. In  
4 other words, Tillamook's marketing is particularly deceptive to Oregon consumers.  
5

64.

6 The messages sent by Tillamook's imagery—conveying superior cow welfare and  
7 personalized care for its animals—are also being received by consumers. In the survey  
8 discussed above, for example, Illustrations 13 and 14 prompted clear perceptions in  
9 respondents regarding the company's special treatment of and care for its animals—  
10 being that of a company operating on a small scale with pasture-grazing cows. And  
11 again, relative to respondents from Idaho, Montana, and Washington, Oregon  
12 consumers viewing Illustration 13 were more likely to agree that the social media post  
13 conveyed that Tillamook gets all its milk from small-scale family farms and not large,  
14 industrial dairy farms.

15 65.

16 Because Tillamook's animal care practices and the living environment it provides  
17 its cows are in fact no different than those of the average dairy factory farm, and in fact  
18 cause suffering for the thousands of cows confined together in its warehouses,  
19 Tillamook's marketing representations are illegal and deceptive, and reasonable  
20 consumers are likely to be deceived.

21 **CLASS ACTION ALLEGATIONS**

22 66.

23 Plaintiffs bring this action as a class action pursuant to ORCP 32 for the time  
24 period beginning one year from before the date of filing of this action to the date on  
25 which a class is certified ("Class Period").

26 - 32 -

27 **COMPLAINT AND DEMAND FOR JURY TRIAL**

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1  
2                         67.

3                         Plaintiffs seek to represent an Oregon class consisting of: All persons in Oregon  
4 who purchased Tillamook dairy products in Oregon during the Class Period. Excluded  
5 from the Class are Defendant's officers and directors and the immediate families of  
6 Defendant's officers and directors. Also excluded from the Class is Defendant and its  
7 subsidiaries, parents, affiliates, joint venturers, any entity in which Defendant has or has  
8 had a controlling interest, any judge who rules on any matter connected to this case, and  
9 any juror who sits on this case at trial.

10                         68.

11                         The class is so numerous that joinder is impracticable. ORCP 32A(1).

12                         69.

13                         This action involves common questions of law and fact because each Class  
14 Member's claim derives from the same deceptive practices. ORCP 32A(2). The common  
15 questions of law and fact involved predominate over questions that affect only Plaintiffs  
16 or individual Class Members. ORCP 32B(3). Common questions of law or fact include:

- 17                         • Whether Tillamook marketed and sold its dairy products to  
18                         Plaintiffs, and those similarly situated, using deceptive statements  
19                         or representations;
- 20                         • Whether Tillamook omitted or misrepresented material facts in  
21                         connection with the marketing and sale of its dairy products;
- 22                         • Whether Tillamook engaged in a common course of conduct as  
23                         described in this Complaint;
- 24                         • Whether Tillamook's marketing and sales of its dairy products  
25                         violates the Unlawful Trade Practices Act, ORS 646.608(1) in one or  
26                         more of the ways alleged;
- 27                         • Whether one or more of Tillamook's violations caused ascertainable  
28                         losses to plaintiffs and the class; and
- 29                         • Whether, and to what extent, injunctive relief should be imposed on  
30                         Tillamook to prevent such conduct in the future.

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27                         COMPLAINT AND DEMAND FOR JURY TRIAL

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70.

Plaintiffs' claims are typical of the Class. ORCP 32A(3). All Class Members bought products marketed with one or more of Tillamook's deceptive claims. Tillamook's deceptive actions concern the same business practices described in this Complaint, irrespective of where they occurred or were received. Because, like Plaintiffs, all Class Members paid more for Tillamook products than they otherwise would have had Tillamook not falsely marketed them, or bought Tillamook products when they otherwise would not have (and would have instead purchased other dairy products that do have the benefits that Tillamook claimed its products have), the injuries of each Class Member were caused directly by Tillamook's illegal conduct as alleged in this Complaint.

71.

Plaintiffs will fairly and adequately protect the interests of all Class Members. ORCP 32A(4). The class shares a common interest in injunctive relief for Tillamook's violations. Plaintiffs also have no interests that conflict with or are antagonistic to the interests of Class Members. Plaintiffs have retained competent and experienced class action attorneys to represent their interests and that of the class.

72.

Plaintiffs commenced this action seeking only injunctive and equitable relief. Plaintiffs gave notice as required by ORCP 32A(5) and 32H and will amend to seek damages should defendant fail to comply with the requirements of ORCP 32I.

73.

A class action is superior. ORCP 32B. There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual

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COMPLAINT AND DEMAND FOR JURY TRIAL

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remedies by members of the Class will tend to establish inconsistent standards of conduct for Tillamook and result in the impairment of Class Members' rights and disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Furthermore, as the injury suffered by each individual member of the Class may be relatively small, the expenses and the burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action.

74.

The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to ORCP 32 are met as Tillamook has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

**FIRST CLAIM FOR RELIEF VIOLATION OF UNLAWFUL TRADE PRACTICES ACT**

### **First Count—Willful violation**

75.

Tillamook willfully violated ORS 646.608(1)(b), (1)(c), 1(d), and 1(t) in one or more of the ways alleged above, and as a result Plaintiffs and the class suffered ascertainable losses, in that they bought Tillamook products when they otherwise would not have, or paid greater amounts than they otherwise would have if they had known the truth. Plaintiffs and the class suffered an ascertainable loss in the amount of the diminished value between the higher, artisan dairy-price they paid for Tillamook products and the

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## **COMPLAINT AND DEMAND FOR JURY TRIAL**

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lower price that they could have paid for other dairy products from industrial facilities that similarly lack the special animal welfare, small-farm, and social benefits that Tillamook falsely touts its products as having.

76.

Plaintiffs and the class seek equitable relief, an injunction, and attorneys' fees. ORS 656.638; ORS 646.636. At the conclusion of the time set forth in ORCP 32J, plaintiffs will amend to seek actual damages.

### **Second Count—Reckless or knowing violation**

77.

Plaintiffs incorporate and reallege the unlawful and deceptive business acts and practices of Tillamook as set forth above.

78.

Tillamook knowingly or recklessly violated the ORS 646.608 in one or more of the way alleged above, and as a result Plaintiffs and the class suffered the previously described ascertainable losses. Plaintiffs and the class seek equitable relief, an injunction, and attorneys' fees. ORS 656.638; ORS 646.636. At the conclusion of the time set forth in ORCP 32J, plaintiffs will amend to seek statutory damages of \$200 per class member.

## **SECOND CLAIM FOR RELIEF UNJUST ENRICHMENT**

79.

Plaintiffs incorporate and reallege Tillamook's unlawful practices as set forth above on behalf of the statewide class.

80.

Tillamook sold its dairy products to Plaintiffs and the class that did not have the characteristics that Tillamook represented the products to have. Plaintiffs and other class

1 members would not have bought these products, or would not have paid as much for  
2 them, if they had known that the representations Tillamook made were false.  
3

4                         81.

5                         As a result of Tillamook's deceptive marketing, Tillamook received a benefit at  
6 the expense of Plaintiffs and members of the class, and it is unjust for Tillamook to retain  
7 that benefit.

8                         82.

9                         Under the circumstances, it is against equity and good conscience to permit  
10 Tillamook to retain the ill-gotten benefits that it received from Plaintiffs and the class, in  
11 light of the fact that the products they purchased did not have the characteristics that  
12 Tillamook represented. Thus, it is unjust or inequitable for Tillamook to retain the  
13 benefit without restitution to Plaintiffs and the class.

14                         83.

15                         As a direct and proximate result of Tillamook's actions, Tillamook has been  
16 unjustly enriched, and Plaintiffs and members of the class have a right to restitution in  
17 an amount to be proven at trial.

18                         **PRAYER FOR RELIEF**

19                         Plaintiff and the class are entitled to equitable relief, an injunction, and attorneys'  
20 fees. ORS 646.638; ORS 646.636.

21                         WHEREFORE, Plaintiffs ask the Court to enter the following judgment:

- 22                         1. Approving of the Class, certifying Plaintiffs as representatives of the Class,  
23 and designating their counsel as counsel for the Class;  
24                         2. Declaring that Tillamook has committed the violations alleged;  
25                         3. Granting restitution, or disgorgement to Plaintiffs and the Class;

26                         - 37 -

27                         **COMPLAINT AND DEMAND FOR JURY TRIAL**

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4. Granting declaratory and injunctive relief to enjoin Defendant from  
engaging in the unlawful practices described in this Complaint;
  5. Granting attorneys' fees and costs; and
  6. Granting further relief as this Court may deem proper.

DATED this 19<sup>th</sup> day of August, 2019.

Respectfully submitted,

DAVID F. SUGERMAN ATTORNEY, PC

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Of Attorneys for Plaintiffs

**PLAINTIFFS DEMAND A JURY TRIAL** as to each issue on which they are entitled.

DATED this 19<sup>th</sup> day of August, 2019.

DAVID F. SUGERMAN ATTORNEY, PC

By David F. Sugerman, OSB No. 86298  
Attorney for Plaintiffs and Trial Attorney

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